IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2023 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL INSURANCE CO. - Appellant(s)
Versus
VERSI LAKHA KOLI & 2 - Defendant(s)

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Appearance :
MR DAKSHESH MEHTA for Appellant(s) : 1,
MR MEHUL S SHAH for Defendant(s) : 1 - 2.
MR SURESH M SHAH for Defendant(s) : 1 - 2.
None for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 27/04/2007

ORAL JUDGMENT

1. Heard the learned counsel appearing for the appellant Mr. Mehta and Mr. Shah for the orig. claimants for final disposal of the appeal.

2. The short facts of the case appears to be that on 29.04.2004, deceased Raju Versi Koli was proceeding from Varmanagar to Navanagar on bicycle and as per the claimants, he was proceeding on the left hand side of the road. At around 17.30 Hrs. when he had reached near Ektanagar, a luxury bus bearing registration No. GJ-12-T-4452 came from the opposite side and dashed with the bicycle of the deceased and the deceased fell down on the road with the bicycle and ultimately, succumbed to the injuries which gave rise to the filing of the claim petition being MACP No. 628 of 2004 before the Tribunal under Section 163A of the Motor Vehicles Act, 1988 (hereafter referred to as 'the Act'). The Tribunal after adjudication assessed the income of the deceased at Rs.3,000/- per month, i.e. Rs.36,000/- per annum and since the deceased was between the age group of 15-20 years, assessed Rs.6,84,000/- and thereafter, deducted 1/3rd of the amount and awarded compensation of Rs. 4,56,000/- and additionally awarded Rs.2,000/- for funeral charges and Rs.2,500/- towards loss of Estate(total Rs.4,60,500/-) with interest @ 9% and it is under these circumstances, the present appeal before this Court.

3. The only contention raised on behalf of the appellant by Mr. Mehta, learned counsel is that the Schedule relied upon by the Tribunal contains many mistakes and he submitted that such mistakes were also noted by the Apex Court in the case of U.P.State Transport Corporation & Ors. Vs. Trilok Chandra & Ors. reported at 1996(4) SCC 362 and more particularly at para 18 of the said decision. He also submitted that once again, such mistake in the Second Schedule was taken note of by the Apex Court with the observation for amendment in the Second Schedule as per the decision of the Apex Court in the case of Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala reported at 2001(5) SCC 175, and more particularly, the observations made at para 26 of the said decision. Therefore, he submitted that the Tribunal has committed error. In the submission of Mr.Mehta, since the deceased was in the age group – 15-20 years, even if the income is considered as Rs.36,000/- per year by applying the multiplier of 15, it would have been Rs.5,76,000/- as against Rs.6,84,000/- as considered by the Tribunal. Therefore he contended that consequently, if 1/3rd amount is deducted and the amount if counted, it would be the compensation for Rs.3,84,000/- + Rs.2,000/- for funeral expenses and Rs.2,500/-for the lost of estate (total Rs.3,88,500/-). As against the same, the Tribunal has awarded Rs.4,60,500/-.

Therefore, the present appeal for additional amount of compensation awarded by the Tribunal is preferred by the Insurance Company.

4. Mr.Shah, learned counsel for the claimants contended that the second col`umn of the multiplier has no applicability in the cases of compensation to be awarded in the cases of death under Section 163A of the Act by the Tribunal and he contended that similar view was also taken by the Division Bench of this Court (Coram: M.S. Shah & Akil Kureshi, J.J.) in its decision dated 26.12.2006 in First Appeal No. 5282 of 2006 in the case of Bajaj Allianz Insurance Company Ltd. Vs. Tejpal Naranji Bhadra & Ors. He also relied upon the decision of the another Division Bench of this Court in the case of Oriental Insurance Co. Ltd. Vs. Chintanbhai Shibhabhai reported at 2004(3) GLR 2018 and contended that in case of award passed by the Tribunal, the decision of the Apex Court in the case of U.P. Road Transport Corporation (Supra) for the compensation awarded was upheld and in the submission of Mr.Shah, this Court did not found that there is any error in the second schedule which may result into non-enforcement of the second schedule for the liability under Section 163-A of the Act. He also relied upon the decision of the Division Bench of this Kerala High Court in the case of National Insurance Company Ltd. Vs. Munir and Ors.

reported at 2003(2) ACJ 1102 and contended that after considering both the aforesaid decision of the Apex Court, the Division Bench of the Kerala High Court has found that the compensation specified in the Second Schedule is proper and the multiplier in column No.2 has the relevance for the cases other than the fatal cases. He therefore submitted that the Tribunal has rightly awarded the compensation.

5. It appears that the facts are not in dispute. The only aspect to be considered is the enforcement of the Second Schedule while awarding compensation under Section 163A of the Act by the Tribunal. On the first sight, the contention raised on behalf of the appellant appears to be attractive, however, on detailed scrutiny, holds no substance. The second schedule, if read as it is, provides for compensation for third party fatal accident and injury cases both. However, the first head is Fatal Accidents and there column No.1 provides for age of the victim. The other columns provide for compensation in the cases of death only incomewise. It is true that in column No.2, the multiplier is mentioned, but it has the reference because in item No.5 provided for disability in non-fatal accidents, vide in clause No. (a), there is a reference to the multiplier applicable to the age of the injured victim/claimant on the date for determining the

compensation. Further, as per the scheme of Section 163A of the Act, the compensation as fixed by the legislature in cases of death/fatal accidents, is to be read as a compact formula and therefore, it is not dependent upon column No.2 for multiplier in fatal cases.

6. At this stage, it would be profitable to extract certain observations of the Division Bench of this Court in the case of Bajaj Allianz Insurance Company Ltd. Vs. Tejpal Naranji Bhadra & Ors (Supra), at para 8, which reads as under :

> *"8. The submission of Mr Nanavati for the appellant-Insurance Company that if the amount of compensation awarded by the Tribunal is divided by multiplier of 16 years, the monthly income of the deceased would come to Rs.2672/- cannot be accepted. The structured formula contained in the Second Schedule provides for compensation for fatal accident/injury cases claims. The reference to the multiplier is only to be found in Note (a) in para 5 of the Schedule dealing with disability in non-fatal accidents. If the multiplier method were to be adopted in all cases, fatal as well as non-fatal, the entire table containing the annual income and the amounts of compensation relatable to the concerned age would become meaningless. The Legislature would not have provided for such a ready reckoner and would have rested content with providing the multiplier only. We, therefore, do not find any substance in the challenge to the computation of compensation amount by the Tribunal."*

7. Further, the effect of the observations of the

Apex Court in the case of U.P.State Transport Corporation (Supra) and Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala (Supra) have been considered by the Division Bench of the Kerala High Court in the case of National Insurance Company Ltd. Vs. Muneer(Supra).

8. It may be recorded that the Kerala High Court in the above referred decision while dealing with the argument of mistake in the second schedule and its un-enforceability to that extent inter alia has observed at para 8 & 9 as under:

> *"8. The learned counsel for the appellant insurer contends that the Second Schedule is riddled with errors, inaccuracies and mistakes. It is hence impossible to follow the Second Schedule while computing the amount payable under section 163-A, it is urged. The learned counsel relies on the observations in U.P. State Road Trans.Corpn. V. Trilok Chandra, 1996 ACJ 831(SC) and Oriental Insurance Co.Ltd. v. Hansrajbhai V. Kodala, 2001 ACJ 827(SC), to contend that section 163-A cannot now be operated as the Schedule abounds in mistakes.*
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> *9. We are unable to accept this contention at all. In U.P. State Road Trans.Corpn. v. Trilok Chandra, 1996 ACJ 831(SC), the Apex Court was dealing with a claim under section 166/168 of the Motor Vehicles Act. It was not dealing with the claim under section 163-A of Motor Vehicles Act. The language of section 163-A must clearly show that section 163-A cannot be operated without the Second Schedule. Section 163-A declares a new absolute statutory liability. The liability is on the owner or the insurer. For the first time, under section 163-A, the*

> *insurer is made statutorily liable primarily. The language of the section is of crucial significance. The policy of insurance is relevant only to ascertain the status of the authorised insurer as such insurer in respect of the vehicle. The liability is primarily on the insurer. The insurer is not directed to indemnify the insured. The very liability is placed on the shoulders of the authorised insurer. Significantly, the driver is not made liable at all. The section mandates that such owner or insurer shall be liable to pay the amounts stipulated in the Second Schedule. We only intend to note that without the Second Schedule, section 163-A cannot be operated. It is significant to note that no court has so far taken the view that section 163-A deserves to be struck off the statute book for the reason that it is unreasonable on the ground that the Second Schedule abounds in mistakes. Also no arguments have been advanced before us that section 163-A deserves to be set aside for the reason that it is grossly unreasonable and perverse. In Oriental Insurance Co.Ltd. v. Hansrajbhai V. Kodala, 2001 ACJ 827(SC), the Apex Court had occasion to consider section 163-A of the Motor Vehicles Act. The said decision shows that though the Supreme Court perceived that some errors/inaccuracies in the Second Schedule deserve to be corrected, the Supreme Court did not say that section 163-A is null and unenforceable on the ground of unreasonableness. Therefore, section 163-A remains on the statute book and the same has to be given effect to."*

Thereafter, the Kerala High Court has further observed at paras 10, 11, 12, 13, 14, 15, 16 & 17, while interpreting the Second Schedule as under:

“10. What are the errors, inadequacies and imperfections in the Second Schedule? Firstly, it is contended that the multiplier given in the 2nd column of the Table in clause 1 does not justify the quantum of compensation fixed in the event of death. We are of the opinion that this is obviously a mistaken impression. A reading of the Second Schedule as a whole shows that the multiplier shown in the 2nd column of the Table is irrelevant while ascertaining the compensation payable in respect of death. In respect of death, compensation payable for various age groups and income groups are stipulated specifically in the subsequent columns. The Tribunals/Courts do not themselves have to apply the multiplier method. One has to ascertain the age group. Then one has to go to the particular entry relating to that age group. The relevant yearly income group has to be ascertained in the column. Once it is ascertained there is specific entry of the compensation payable in 'Rupees in thousands'. The entries in the second column under the head 'Multiplier' are intended to be taken into account only when the quantum of compensation payable in respect of non-fatal accidents under clause 5(a) and (b) of the Second Schedule is taken up for consideration. Perhaps the error is in showing the multiplier in column 2 of the Table, instead of showing the same under clause 5. This is the only mistake as far as we can ascertain in respect of the multiplier shown in column 2 of the Table in clause 1 of the Second Schedule.

11. We then come to the criticism that the quantum payable has not been reasonably fixed. If we consider the amount in thousands specified in the remaining columns of clause 1 of the Second Schedule, we can say that a method has been followed. It is perhaps possible to identify the multiplier which the legislature adopted to compute the

quantum of the compensation payable in the case of death. In respect of persons aged up to 15 years, 20 is the multiplier adopted. This is evident from Rs.60,000 stipulated as compensation for persons whose annual income is Rs.3,000 and Rs.8,00,000 stipulated for persons whose annual income is Rs.40,000. Similarly, for entries 2 and 3 in the Table, i.e. for persons aged 15 to 20 years, and for persons of 20 to 25 years 19 and 18 are the respective multipliers adopted to fix the compensation payable. For all such entries for the various age groups it is thus possible to ascertain the method followed by the legislature. The following Table will make the position very clear. We make use of the first and the last columns-persons earning Rs.3,000 and Rs.40,000 per year to ascertain the multiplier which the legislature had in mind while fixing the quantum of compensation payable for death.

Age group	**Annual income of Rs.3,000**	**Annual income of Rs.40,000**	**Multiplier reckoned by the legislature**
Upto 15 years	60,000(3,000 X 20)	8,00,000(40,000 X 20)	20
15-20 years	57,000(3,000 X 19)	7,60,000(40,000 X 19)	19
20-25 years	54,000(3,000 X 18)	7,20,000(40,000 X 18)	18
25-30 years	51,000(3,000 X 17)	6,80,000(40,000 X 17)	17
30-35 years	50,000-minimum	6,40,000(40,000 X 16)	16
35-40 years	50,000-minimum	6,00,000(40,000 X 15)	15
40-45 years	50,000-minimum	5,60,000(40,000 X 14)	14
45-50 years	50,000-minimum	4,80,000(40,000 X 12)	12
50-55 years	50,000-minimum	4,00,000(40,000 X 10)	10
55-60 years	50,000-minimum	3,20,000(40,000 X 8)	8
60-65 years	50,000-minimum	2,40,000(40,000 X 6)	6
Above 60 years	50,000-minimum	2,00,000(40,000 X 5)	5

Of course, we note that there are some minor discrepancies/arithmetical errors in the following instances:

Age group	**Income group**	**Amount shown**	**Actual amount that ought to be shown**

15-20 years	5,400	102	102.6 (5,400 x 19)
45-50	24,000	286	288 (25,000 x 12)
55-60	36,000	286	288 (36,000 x 8)

These are obvious innocuous errors and can certainly be overlooked.

12. The error is in the courts assuming that the multiplier in column 2 of the Table is necessary to identify the quantum of compensation payable in respect of death of victims. In respect of death of victims the multiplier method need not be followed by the court as the legislature in the structured formula(Table) in the Second Schedule has specified the amount itself.

13. The next contention is that it is preposterous that in the case of death a higher multiplier is used and in the case of permanent disability a lesser multiplier is used. This of course is the case in respect of the following age groups:

Age group	**Multiplier for permanent disability**	**Multiplier for death**
1-15 years	15	20
15 to 20 years	16	19
20 to 25 years	17	18
60 to 65 years	5	6

For two age groups, i.e.,55-60 years and 'about 65 years' the multiplier adopted for death and permanent disability is the same, i.e., 8 and 5 respectively. For all other age groups the multiplier stipulated for permanent disability is higher than the multiplier accepted for death. To question the rationale, wisdom and the philosophy of the legislature is not certainly the function of the courts while interpreting statutory provisions. We make it clear that we are not attempting to subject the statutory provision to judicial review. But

are only attempting to interpret the legislative stipulations. We must remind ourselves that the Supreme Court has never said that Section 163-A is null and unenforceable for the reason that the Table in the Second Schedule is grossly unreasonable and perverse. We are of the opinion that it is not necessary for us exercising appellate jurisdiction under section 173 of the Motor Vehicles Act to question the wisdom of the legislature in prescribing higher multipliers in respect of death of victims of certain age groups than the multiplier fixed for permanent disability of such groups.

14. If Rs. 15,000 is to be assumed as the notional income for non-earning persons, why does the Second Schedule give 9 columns to cover cases of persons earning less than Rs.15,000 per annum? This question is posed with great fervour. This might appear at the first blush to be unnecessary and superfluous. But we must alertly note that at least theoretically the notional income is for those who are 'non-earning persons'. If a person is actually earning, actual earnings can be reckoned. Will anyone admit that he is earning less if his earning is less than Rs.15,000 per annum, it is queried. We need only mention that it is not only admissions which would be relevant. An opposite party can always show that a person was not a non-earning person but was an earning person and was actually earning below Rs.15,000 per annum. Of course it is difficult to understand why the benefit given to non-earning persons cannot be extended to all persons including those who earn less than Rs.15,000 per annum. But at any rate this alleged incongruity cannot persuade us to hold that section 163-A cannot be worked and the quantum payable cannot be ascertained from the Second Schedule.

15. It is contended that for non-earning persons Rs.15,000 per annum is the notional income assumed. For the surviving spouse of such a person only one-third of the said income can be assumed notionally. This is perverse, it is contended. We find no merit in this contention also. According to us all spouses who are non-earning persons can be assumed to earn Rs.15,000 per annum. Clause 6(b) would come into operation only if annual income earned by the surviving spouse exceeds Rs.45,000. The assumption is in respect of the non-earning spouse. The notional income of such spouse can be assumed at the one-third of the income of serving earning spouse, only when this works out to the advantage of the non-earning spouse. Only if the said spouse can claim more than Rs.15,000 per annum as his notional income under clause 6(b), will this clause come into play at all. That again is, therefore, not a defect which can lead us to the conclusion that Second Schedule is unreasonable and perverse.

16. If Rs. 15,000 per annum is the notional income, why is not that reckoned as a relevant income group in the Table (structured formula). After Rs.12,000 per annum, the next column is only Rs.18,000 per annum. This is of course unfortunate. Rs.15,000 being the assumed notional income of a non-earning person, in fairness and in the fitness of things, there must have been a relevant column for persons earning that income in the Table(structured formula). But the omission is of no crucial significance as it is always possible to arrive at the relevant quantum of compensation for death payable by taking into account the relevant multiplier ascertained already or by working out the average between compensation fixed for persons having the annual income of Rs.12,000 and Rs.18,000. That again is not hence a defect or deficiency which can

> persuade us to ignore or jettison the Second Schedule.
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> 17. Each entry in column No.1 of the Schedule prescribes a range of age-'up to 15 years', 'above 15 but not exceeding 20 years' etc. But similar stipulation is not made when we consider the annual income. Specific amounts(and not range) are prescribed in each column. If a person's income is between the two specified income, how do we ascertain the quantum of compensation payable for death? This question need not also detain us any longer as it is always possible to ascertain the quantum by arriving at the proper multiplier indicated above or by taking the average between the two adjacent specified income groups. Of course, it would have been better if the range were specified in each column. But that inelegance or imperfection is again not sufficient to discard the Second Schedule."

9. I find myself in agreement with the view taken by the Division Bench of the Kerala High Court and in view of the same reasons, the arguments and contention raised on behalf of the appellant deserves to be rejected for non-enforceability of the Second Schedule on account of the mistake as sought to be canvassed.

10. In any case, there is no mistake found vide the specification of the compensation in respect to the persons of the age group of 15-20 years having income of Rs.36,000/- per year. Therefore, the Tribunal rightly counted the total amount of compensation at Rs.6,84,000/- and as per the note in the Schedule, the

Tribunal has rightly deducted 1/3rd of the amount and has rightly awarded the 2/3rd of the amount of Rs.4,56,000/- towards loss of dependency benefit. There is no dispute or challenge on the other aspects of funeral expenses or loss of estate.

11. Therefore, it appears that the Tribunal has rightly awarded the compensation of Rs.4,60,500/- under Section 163A of the Act in the impugned Award.

12. The only aspect which may deserve consideration is that the Tribunal has permitted disbursement of 40% and investment of only 60% of the amount and the said exercise of discretion by the Tribunal for disbursement appears to be on higher side. It appears that the Tribunal at the most ought to have permitted 30% of the disbursement and ought to have directed for 70% of the investment of the total amount with a view to ensure that the claimants may continue to enjoy the benefit of the compensation awarded for a reasonable period. Therefore, the only modification deserves to be made in the Award of the Tribunal is that as against the investment of 60% of the total amount, 70% of the investment shall be made of the total amount awarded together with the interest and cost and the disbursement shall be of 30% of the remaining amount. The other condition imposed

by the Tribunal of the investment and of the disbursement will be the same.

13. Hence, the appeal is partly allowed only on the aspects of disbursement and investment. The other aspects on the quantum of compensation and the interest awarded are confirmed. The amount deposited of Rs.25,000/- shall be transmitted to the Tribunal.

(JAYANT PATEL, J.)

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